

220 CMR 2.00: ~~ADOPTION OF REGULATIONS~~RULES FOR ADOPTING,  
AMENDING, OR REPEALING REGULATIONS AND FOR ISSUING  
ADVISORY RULINGS

Section

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2.01: Definition of Regulation

220 CMR 2.00 governs the procedures to be followed by the Department when adopting, amending or repealing regulations. The term "regulation" shall be as defined in M.G.L. c. 30A, § 1(5). "Regulation" does not, however, include advisory rulings, rules relating to the internal management of the Department and not directly related to the rights or procedures available to the public, decisions rendered in adjudicatory proceedings, or the filing of tariffs, rate schedules, and terms, conditions and regulations in connection therewith.

2.02: ~~Petition for Adoption of Regulations~~

~~Initiation of Action~~

The Department may initiate an action on its own at any time to adopt, amend or repeal any regulation. Any interested person or his attorney may at any time ~~petition~~file with the Secretary of the Department a petition (1) to ~~adopt, amend, or repeal any regulation~~or (2) to issue an advisory ruling with respect to the applicability to any person, property or factual situation of any statute or regulation enforced or administered by the Department. ~~The~~Every petition shall ~~be~~ addressed to the Department and sent to the Secretary by mail or delivered in person during normal business hours. ~~All petitions shall be signed by~~contain the following information:

- (a) The name, address, and telephone number of the petitioner(s).  
(b) If the petitioner is represented by counsel, the name, address, and telephone number of the attorney.

- ~~\_\_\_\_\_~~ (c) The signature of the petitioner or his attorney, contain his address or the address of his attorney, and set forth clearly and concisely the counsel.
- ~~\_\_\_\_\_~~ (d) A clear and concise statement of the facts underlying the petition, the nature of the petitioner's interest and the basis for the requested relief and, in the case of a request for an advisory ruling, an affidavit or attestation that all of the facts presented are true to the best of the petitioner's knowledge.
- ~~\_\_\_\_\_~~ (e) The complete text of the proposed regulation. The petition may be accompanied by any supporting data, views or arguments.

### 2.03: Initial Procedure to Handle Recommended Regulations

- ~~\_\_\_\_\_~~ or, in the case of a request for an advisory ruling, a specific legal question.
- ~~\_\_\_\_\_~~ (f) A reference to any applicable statute or legal authority.
- ~~\_\_\_\_\_~~ (g) A prayer setting forth the relief sought.

### 2.03: Action on Petitions

~~\_\_\_\_\_~~ Upon receipt of a petition ~~for the adoption, amendment or repeal of a regulation~~

~~\_\_\_\_\_~~ ~~submitted pursuant to 220 CMR 2.02 or upon written recommendation by a Commissioner or staff members of, the Department that a regulation be adopted, amended or repealed, the Commission shall determine whether to schedule the petition or recommendation for further proceedings~~ may proceed in accordance with 220 CMR 2.04, 2.05 or 2.05. ~~If the regulation has been presented to the Department under 220 CMR 2.02, the Secretary~~ 08 or take any other action the Department deems appropriate.

The Department shall consider all relevant information presented to it before adopting, amending or repealing any regulation or issuing an advisory ruling. Any decision of the Department shall within ten days after such determination notify the petitioners of the Commission's action be in writing and shall be accompanied by a statement of reasons for the decision. A copy of the decision and such statement of reasons shall be served on all interested persons by personal delivery or first-class mail.

### 2.04: Procedure for the Adoption, Amendment or Repeal of Regulations Where No Public Hearing Is Required

- (1) Notice.
- (a) Notice of the proposed action to adopt, amend or repeal regulations shall be given by the Department at least 21 days prior to its proposed action, unless some other time is specified by any applicable law. The Department shall publish the notice in at least one newspaper of general circulation, and where appropriate, in such trade, industry, or professional publications as the Department may select. The Department shall likewise notify in writing any person specified by any law and any

person or group which has filed request for notice pursuant to 220 CMR 2.09.

(b) The notice shall contain the following:

1. The ~~Department's~~ statutory authority ~~to adopt~~ under which the action is proposed ~~regulation.~~
2. The procedure for ~~submitting data, views~~ presenting written or arguments as set forth in 220 CMR 2.04(2) oral comments.
3. The express terms or the substance of the proposed regulations.
4. Any additional matter as required by any law.

The above notwithstanding, the Department shall also comply with any applicable statute which contains provisions for notice which differ from those contained herein.

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- (2) Procedure. ~~Within 21 days after the publication and sending of notice regarding the proposed action, any~~ Written or Oral Comments. ~~An interested person may submit a signed letter, brief or other memorandum stating his views or arguments concerning the proposed action. The letter, brief or memorandum shall be addressed~~ written comments ~~to the Department and sent to the Secretary by mail or delivered in person during normal business hours. The Commission shall, at its next scheduled meeting, consider the proposed action. Within 30 days after this meeting,~~ in connection with the proposed regulation in accordance with any procedure set forth in the notice pursuant to 220 CMR 2.04(1). ~~If the Department shall give written notice of the disposition of the proposed action to all persons required to receive personal notice under~~ determines that oral presentations are necessary or practicable, the notice pursuant to 220 CMR 2.04(1)(a) ~~and such other persons submitting a letter, brief, or other memorandum.~~
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- ~~(3) Oral Participation.~~ ~~The Commission may afford any~~ will set forth the manner, place and time that ~~interested person or his duly authorized representative, or both, an opportunity to~~ persons may orally ~~present data, views or arguments orally before the Commission during the meeting at which the proposed action is to be considered. If the Commission finds that such oral presentation is unnecessary or impracticable, it may require written presentation according to 220 CMR 2.04(2).~~
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- ~~(4) Waiver of Notice and Participation~~ argument regarding the proposed regulation.
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- (3) Emergency Regulation. ~~If the Commission finds that~~ Department finds that the immediate adoption, amendment or repeal of a regulation is necessary to preserve the public health, safety or general welfare, and that observance of the requirements of notice and an ~~opportunity to present views on its proposed action are unnecessary, impracticable or for comments would be~~ contrary to the public interest, the ~~Commission~~ Department may dispense with such

requirements ~~or any part thereof. The Commission's~~ and adopt, amend or repeal the regulation as an emergency regulation. The Department's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency regulation, ~~amendment or repeal~~ as filed with the Secretary of State under 220 CMR 2.07 Office of the Secretary of the Commonwealth in accordance with 220 CMR 2.07. An emergency regulation shall not remain in effect for longer than three months unless, during the time it is in effect, the Department gives notice and an opportunity for comments, and adopts it as a permanent regulation in accordance with 220 CMR 2.00.

## 2.05: Procedure for the Adoption, Amendment or Repeal of Regulations Where a Public Hearing Is Required

### (1) Notice.

- (a) Notice of a public hearing shall be given at least 21 days prior to the date of the hearing, unless some other time is specified by any applicable law. The Department shall publish the notice in at least one newspaper of general circulation, and where appropriate, in such trade, industry, or professional publications as the Department may select. The Department shall likewise notify in writing any person specified by any law and any person or group which has filed written request for notice pursuant to 220 CMR 2.09.
- (b) The notice shall contain the following:
  1. The ~~Department's~~ statutory authority ~~to adopt~~ under which the action is proposed ~~regulation~~.
  2. The time and place of the public hearing.
  3. The procedure for presenting written or oral comments.
  34. The express terms or the substance of the proposed regulation.
  45. Any additional matter required by any law.

The above notwithstanding, the Department shall also comply with any applicable statute which contains provisions for notice which differ from those contained herein.

~~(2) Procedure. On the date and at the time and place designated in the notice referred to in 220 CMR 2.05(1), the Commission shall hold a public hearing. The meeting shall be opened, presided over and adjourned by the Chairman or other Commissioner designated by the Chairman. Within ten days after the close of the public hearing, written statements and arguments may be filed with the Commission. The Commission shall consider all relevant matter presented to it before adopting, amending or repealing any regulation.~~

~~(3) Oral Participation. Any~~

~~(2) Written or Oral Comments. An~~ interested person ~~or his duly authorized representative, or both, shall be given an opportunity to present oral statements and arguments~~ may present written or oral comments to the Department in

connection with the proposed regulation in accordance with any procedure set forth in the notice pursuant to 220 CMR 2.05(1). In its discretion the Commission~~Department~~ may limit the length of oral presentation.

(3) Conduct of Hearing. The hearing shall be conducted by a presiding officer who shall be the Commission Chairman, a Commissioner designated by the Chairman or a hearing officer designated by the Commission.

(4) Emergency Regulation. If the Commission~~Department~~ finds that the immediate adoption, amendment or repeal of a regulation is necessary ~~for~~to preserve the public health, safety or general welfare, and that observance of the requirements of notice and public hearing would be contrary to the public interest, the Commission~~Department~~ may dispense with such requirements and adopt, amend or repeal the regulation as an emergency regulation. The Commission's~~Department's~~ finding and a brief statement of the reasons for its finding shall be incorporated in the emergency regulation as filed with the Office of the Secretary of ~~State~~the Commonwealth in accordance with ~~220 CMR 2.07.~~ ~~Any emergency regulation so adopted shall state the date on which it is to be effective and the date upon which it shall expire. If no effective date is stated, the regulation shall be presumed to take effect upon being filed with the Secretary of State under 220 CMR~~220 CMR 2.07. An emergency regulation shall not remain in effect for longer than three months unless, during the time it is in effect, the Department gives notice and holds a public hearing, and adopts it as a permanent regulation in accordance with 220 CMR 2.00.

#### 2.06: Availability of Regulation

The Secretary of the Department shall be responsible for keeping a book containing all the Department's regulations. ~~In addition, the Secretary shall compile and publish the regulations which are currently in effect.~~ All the regulations of the Department shall be available for inspection during normal business hours at the Department's offices. Copies of all regulations shall be available to any person on request. The Department may charge a reasonable fee for each copy.

#### 2.07: Filing of Regulation

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\_\_\_\_\_ Upon the adoption of a regulation, an attested copy shall be filed with the  
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~~Secretary of State together with a citation of the statutory authority under which the regulation has been promulgated.~~ The Office of the Secretary of the Commonwealth in accordance with M.G. L. c. 30A, § 5. Pursuant to M.G. L. c. 30A, § 6, the regulation shall take effect upon filing unless a later date is required by any law or is specified by the Department.

## 2.08: Advisory Ruling

- ~~(1) Any interested person or his attorney may at any time request~~In response to a petition for an advisory ruling ~~with respect to the applicability to any person, property or factual situation of any statute or regulation enforced or administered by the Department. The request shall be addressed to~~submitted under 220 CMR 2.02, the Department ~~and sent to the Secretary by mail or delivered in person during normal business hours. All requests shall be signed by the person making it or his attorney, contain his address or the address of his attorney, and state clearly and concisely the substance or nature of the request. The request may be accompanied by any supporting data, views or arguments. If the Commission determines that~~may give notice and an opportunity for written or oral comments and may issue an advisory ruling ~~will not be rendered, the Department shall within ten days thereafter notify the petitioner that the request is denied. If an advisory ruling is rendered, a copy of the ruling shall be sent to the person requesting it or his attorney.~~
- ~~(2) The Department may notify any person that an advisory ruling has been requested and may receive and consider arguments, views, or data from persons other than the person requesting the ruling.~~

## 2.09: Request for Notice of Hearings

- (1) Who May File. Any person or group may file a request in writing to receive notice of hearings or regulations which may affect such person or group.
- (2) Form of Request. The request shall contain the following:
- (a) Name of person or group;
  - (b) Address;
  - (c) Subject matter of regulations which may affect the person or group.
- (3) When Filed. The request shall be filed with the Secretary of the Department during the month of December and shall be in effect only during the subsequent calendar year.

## REGULATORY AUTHORITY

220 CMR 2.00: M.G.L. c. 30A, §§§ 1, 2, 3, 3A, 4, 5, 6, 6B and 8.